

## EXHIBIT B

NYACK ORTHOPEDICS & SPORTS MEDICINE, P.C.

Robert L. Boothe, M.D.  
311 N. Midland Avenue Upper Nyack, NY 10960  
(914) 353-2683 (BONE)

Mr. Timothy Tychi  
Con Rail  
RD #2  
P.O. Box 145  
Selkirk, New York 12158

October 1, 1990

RE: Daniel Whalen  
Our file: #622-1

Dear Mr. Tychi:

On October 1, 1990 I performed the physical examination as part of the comprehensive evaluation of your employee, Daniel Whalen. He was cooperative throughout the interview and examination which followed.

Prior to performing the physical examination, the extensive medical records you submitted to me were reviewed.

Records with reference to back symptomatology:

Episode#1: 6/10/85 - report from Richard Fenton indicates he was injured on that date when he fell backwards onto his back. X-rays at Phelps Hospital were negative. Dr. Fenton's report of 7/1/85 would indicate his back examination was normal.

Episode#2: August 1985 - report of Dr. Fenton 8/20/85 makes reference to Mr. Whalen having injured his back playing tennis, which required resting for several days - Dr. Fenton's examination on 8/20 was apparently unremarkable.

Episode#3: October 1985 - rechecked by Dr. Fenton on 10/18/85 with a history of the back pain again taking place after playing tennis. He had spasm at that time with a normal neurological examination. A back corset was recommended.

**NYACK ORTHOPEDICS & SPORTS MEDICINE, P.C.**

Robert L. Boothe, M.D.  
311 N. Midland Avenue Upper Nyack, NY 10960  
(914) 353-2663 (BONE)

Episode#4: December 1985 - a report again by Dr. Fenton on 10/10/85 mentions that about "four weeks before" while at work, he had pain in the lower back radiating to his left buttock and thigh. Again the physical examination at that time showed very little spasm and no neurological deficits. At that point Dr. Fenton mentioned restrictions about the patient doing repetitive bending and excessive lifting. A follow-up note by Dr. Fenton on 1/31/86 indicated that he felt that Mr. Whelan could return to his "normal activities".

Episode#5: December 14, 1986 - report from Dr. Fred Hochberg states "on 12/14/86 he was placing a knuckle in a drawbar, and as he pushed it forward, he felt a snap in his lower back." He was seen at Phelps Memorial Hospital and referred to see Dr. Bruce Heckman in Ossining, N.Y.

There is a copy of a prescription from Dr. Bruce Heckman in which he requested a "MRI of the lumbar spine" noting "trauma" and indicating that he had a positive straight-leg raising test on the right.

A report by Dr. Fred Hochberg in New York City dated 1/21/87 reported that he had a "lumbosacral sprain and appears to have some nerve root irritation in the lumbosacral area". There is a note from Dr. Fred Hochberg, 3/2/87 in which he allowed him to return to work on 2/23/87.

Episode#6: 3/8/87 - report from Dr. Hochberg indicates that Mr. Whalen was "making some copies of paper while standing at a copy machine, he turned and felt increasing low back pain, radiating to the right leg." This led to his re-evaluation by Dr. Hochberg on 3/10/87, and the follow-up note of 4/7/87 indicated at that date he was still disabled.

I have no medical documentation as to when he was released to go back to work in 1987.

**NYACK ORTHOPEDICS & SPORTS MEDICINE, P.C.**

Robert L. Boothe, M.D.  
311 N. Midland Avenue Upper Nyack, NY 10960  
(914) 353-2663 (BONE)

Episode#7: report of Dr. Chauncy Dobson on 12/2/87 makes reference to the previous visits with Dr. Fenton 1/31/86. The evaluation on 10/20/87 indicates he had right buttock pain and back pain. The right ankle-jerk was depressed at that date. X-rays taken on 11/87 were felt to show "marked lumbosacral lordosis with lumbarization S1. A subsequent follow up note dated 1/6/88 by Dr. Dobson indicated that Mr. Whalen continued to show an absent right ankle-jerk and requested that a CAT scan be done of the lumbosacral spine.

Episode#8: December 1988 - report of Dr. Dobson of the visit of 1/6/89 indicates that Mr. Whalen had pain in the right leg two and one-half weeks previously going down to the calf. He had been seen at Peekskill Community Hospital for that pain. The report states that "about six weeks ago while on the job, he twisted his back and felt numbness in his lateral right foot". Follow-up note of 2/13/89 by Dr. Dobson indicated that the patient still showed a depressed right ankle-jerk and he felt that Mr. Whalen had a "acute herniated nucleus pulposis on the right which is stabilized." He allowed him to return to work on 2/21/89.

Episode#9: May, 1989 - report of Dr. Dobson 5/23/89 - "the patient had a recurrence of acute pain and stiffness, his lower back was improved at the time of the exam." A follow-up note dated 9/26/89 comments on a follow-up visit of 7/21/89 at which time Mr. Whalen was still having back pain and the right ankle jerk again being absent. Physical therapy was requested for him.

Follow-up notes from Dr. Dobson are reviewed for 1990 starting on 1/3, continuing on 2/14, 3/26, 5/7, and 6/27. Bilateral radiculopathy appeared to have been present in February of 1990, which apparently subsided in the weeks that followed associated with therapy.

OCT-03-1990 12:01 FROM NYACK ORTHO &amp; SPORTS

TO

5187878295 P.05

**NYACK ORTHOPEDICS & SPORTS MEDICINE, P.C.**

Robert L. Boothe, M.D.  
311 N. Midland Avenue Upper Nyack, NY 10960  
(914) 353-2663 (BONE)

**Non-back related problems:**

A report and office notes from Dr. Fenton in February 1981 going through May 4, 1982 refers to problems he had with his left knee. It is stated in the report dated 11/5/81 that on 8/26/81, while working for the railroad he was climbing back out of a train when his left knee buckled and he felt pain in the joint. A subsequent arthrogram did not document any meniscal pathology and he apparently made a good recovery as per the note of Dr. Fenton 5/4/82.

Hand-written notes from apparently Dr. Fenton, while he was being treated for the knee, would suggest that he had sustained a fracture of the fourth left metacarpal sometime prior to visits in February 1982.

An x-ray report of 6/14/83 describes the presence of a healing fracture at the base of the left fourth and fifth metacarpal. Circumstances of the injury are not discussed in the office note.

The office noted of Dr. Fenton would also indicate that on February 21, 1984, he was evaluated there after being struck by an air hose - he was apparently referred to an emergency room for evaluation.

References made in August 1985 to having numb sensation in the thumb and index finger of the left hand, which is associated with opening a box car door.

June 6, 1988 - office note of Dr. Dobson refers to Mr. Whalen having sustained a fracture of the left thumb when it was caught between the handle and a bar closing a freight car door.

3/10/89 - note of Dr. Dobson refers to an evaluation of Mr. Whalen on March 17, 1989 with reference to having sustained a fracture of the tip of the left ring finger (on 3/9/89).

OCT-03-1990 13:02 FROM NYACK ORTHO &amp; SPORTS

TO

5187878295 P.06

**NYACK ORTHOPEDICS & SPORTS MEDICINE, P.C.**

Robert L. Boothe, M.D.  
311 N. Midland Avenue Upper Nyack, NY 10960  
(914) 353-2663 (BONE)

**History from Claimant:**

He states that his main back problems are associated with injury which took place on December 14, 1986. At that time he was attempting to put a knuckle on coupler when a wooden tie gave way. He believes it was mainly a twisting-type injury. He was seen at Phelps Memorial Hospital subsequently by Dr. Bruce Heckman, his personal physician. He recalls being out of work for approximately six months. He recalls having physical therapy and rehabilitation. He thinks he returned to work in about June 1987 at full duty. He recalls having had several other episodes of back pain. He believes only one of the episodes required him missing work for a few weeks and then he felt he was "o.k." to return to work.

He recalls an episode in February 1988 when he was closing a car door but he does not believe he was unable to work for "a long time". He has not worked for Con Rail since 1988.

He has been followed by Dr. Dobson at intervals of approximately six weeks for the last two years for his back. He states that six months ago he received authorization for physical therapy.

**Present Complaint:**

He states he has not had any problems with his back for the last several weeks. About six weeks ago he had a little bit of aching. He would describe the pain as "a little sore". He would not have any tingling or numbness in the legs.

**Physical Examination:**

Mr. Whalen was examined wearing his undershorts. He was able to get on and off the examination table without any apparent difficulty and moved around the examination room without any apparent difficulty.

Weight: 174 pounds, Height: 68 inches.

NYACK ORTHOPEDICS & SPORTS MEDICINE, P.C.

Robert L. Boothe, M.D.  
311 N. Midland Avenue Upper Nyack, NY 10980  
(914) 353-2683 (BONE)

Ankle-jerk, right and left: one plus; knee-jerk, right and left: two plus. Straight leg raising was negative at eighty degrees. He was able to heel-walk and toe-walk without apparent difficulty. Forward flexion allowed him to bring his hands to the level of the floor. Right or left lateral tilt appeared to be normal. There was no tenderness subjectively reported by the patient to palpation over the lower lumbosacral spine and posterior margin of the pelvis. Circumference of both legs measured six inches below the knee joint-line, at the knee joint-line, and six inches above the knee joint-line were equal bilaterally. Soft-touch motor and pinwheel testing of both lower extremities did not document any deficits.

Comment:

I have been asked to evaluate Mr. Whalen with reference to his physical capability to return to work as a car inspector. A copy of the job description and physical demands was made available for my review.

Reviewing the claimant's copious medical records, and noting that there have been recurring problems involving his lower back with radiculopathy, the first step of the evaluation should be the performance of an MRI to assess the status of his lumbar spine discs and nerve roots. Subsequent evaluative recommendation may be considered once the results of the MRI are known.

I, Robert L. Boothe, M. D., certify and affirm that the foregoing report is true to the best of my medical knowledge under the penalty of perjury.

Very truly yours,



Robert L. Boothe, M.D.

RLB:wg